No. 79-1740

In The

Supreme Court of the United States

October Term, 1980

GERMAIN H. BALL, et al.,

Appellants,

v.

ROLAND W. JAMES, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE*

Arizona Civil Liberties Union
Arizona Community Action Association, Inc.
Arizonans for a Better Environment, Inc.
Association of Community Organizations for Reform Now
Chicanos Por La Causa, Inc.
Citizens Concerned About the Project, Inc.
Human Development Council of the Catholic Diocese of Phoenix
Maricopa Audubon Society, Inc.
Metropolitan Phoenix Indian Coalition
Orme Alternatives Coalition
People United for Self Help
Valley of the Sun Grey Panthers

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COMPLIANCE WITH RULE 36.2

Pursuant to Rule 36.2, Rules of the Supreme Court of the United States, all parties to this case have consented to the filing of this brief. A copy of the letters requesting consent and the letters granting consent have been filed with the Clerk.

INTEREST OF THE AMICI CURIAE

The *Arizona Civil Liberties Union* is a statewide affiliate of the American Civil Liberties Union (A.C.L.U.), a sixty-year old organization dedicated to the advancement and defense of the principles enunciated in the Bill of Rights and Fourteenth Amendment of the United States Constitution. The A.C.L.U. and its Arizona affiliate subscribe to the proposition that "the right of suffrage is a fundamental

matter in a free and democratic society," *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964), and that preferred classes of voters in public elections are incompatible with the American system of representative self-government. The Arizona Civil Liberties Union opposes the retention of a preferred class of voters-landowners-in Salt River Project Agricultural Improvement and Power District (District) elections.

The *Arizona Community Action Association, Inc. (A.C.A.A.)* is a statewide association of community action programs and other organizations which provides counseling, training, technical assistance, and advocacy service to the poor in such areas as energy, health, housing, and nutrition. The *A.C.A.A.* has an energy advisory committee which is concerned with issues of energy conservation and utility rates as they affect low-income consumers. *A.C.A.A.* conducts workshops on energy conservation and is publishing a booklet on home energy conservation and budgeting. It has intervened in hearings of the Arizona Corporation Commission (Commission) where privately-owned utility companies have presented rate increase requests, and the *A.C.A.A.* has successfully filed suit overturning rate increases approved by the Commission. *A.C.A.A.* staff have also participated in advisory committees established by the District and have witnessed first hand the limited public input permitted in District electric rate-setting activities.

Arizonans for a Better Environment, Inc. (A.B.E.) is an Arizona non-profit corporation dedicated to preserving and enhancing the environment. It is funded primarily through donations from persons residing within the District and has a membership of about 2500. *A.B.E.* favors increased use of solar energy and energy efficiency improvements as alternatives to nuclear and fossil-fuel power generation. The District is participating in the Palo Verde Nuclear Generating Station presently under construction near Phoenix, Arizona, and operates numerous fossil-fuel fired plants. If completed, Palo Verde will be the largest nuclear power plant in the United States. Because the health and safety risks associated with this nuclear power plant will be shared

by all residents of the District, and because fossil-fuel plants (particularly coal) pose serious health risks, *A.B.E.* believes that decisions to build new electric plants are too important to be left to large landowners alone.

The *Association of Community Organizations for Reform Now (A.C.O.R.N.)* is a non-profit corporation with chapters in twenty states. Its purpose is to promote and coordinate organization and self-help in low and moderate income neighborhoods. The Arizona branch of *A.C.O.R.N.* has ten local chapters within the Phoenix metropolitan area which have organized to address such issues of neighborhood concern as pesticide spraying, waste disposal, traffic control, police protection, and utility service. *A.C.O.R.N.* has intervened, presented testimony, and cross-examined at private utility rate hearings before the Arizona Corporation Commission. *A.C.O.R.N.* believes that its constituents within the Phoenix metropolitan area who depend upon the District for electric service are vitally affected by its many powers, whether or not they own land, and should thus be able to hold the District accountable through the electoral process for the rates, terms, and quality of its customer service.

Chicanos Por La Causa, Inc. (C.P.L.C.) is an Arizona non-profit corporation which provides social services, employment training, housing and consumer counseling, and commercial and economic development within a 93 square mile depressed "special impact area" that comprises the southern and central parts of the Phoenix metropolitan area. Most of this special impact area lies within the flood plain of the Salt River, and many of its residents rely on the District for electrical service. *C.P.L.C.* shares the concern of other participants in this brief that all residents of the District should be able to help shape the policies of the District Board of Directors in such areas as rate-making, energy development, and water management. Because of the vulnerability of *C.P.L.C.'s* special impact area to flooding and because of *C.P.L.C.'s* commitment to community and economic development in that area, *C.P.L.C.* is particu-

larly concerned that its constituents have an electoral voice in shaping the policies of the District which affect flood control. *C.P.L.C.* would like to see the District seek broader authority to utilize its dams to provide more than incidental flood control. J.A. 42-43. To the South Phoenix community, which lies south of the Salt River bed, past flooding has meant isolation and severe economic hardship. District water management activities affect the security of *C.P.L.C.'s* South Phoenix constituents in their homes and businesses, the degree to which they may be isolated by flooding from jobs, services, and facilities in other parts of Phoenix, and the success of their efforts to attract industry and business to provide economic growth and development for their community.

Citizens Concerned About the Project, Inc. (C.C.A.P.) is a non-profit Arizona corporation originally organized in 1973. It has approximately 500 members, most of whom are residents within the District's boundaries. Its basic purpose is to seek reform of Arizona water law and policy with particular concentration on the monetary impact on Arizona taxpayers of present water policies and subsidies. It has for five years opposed the transfers of funds from District electric revenues to subsidize water use. It is also concerned about the extent to which the District's pumping of groundwater results in depletion of groundwater supplies.

The *Human Development Council of the Catholic Diocese of Phoenix (Council)* was formed in 1971 to act as the "conscience of the diocese" in the area of social concerns. The *Council* conducts local diocesan activities relating to the United States Catholic Campaign for Human Development, disseminates information concerning poverty and proposes projects for relief of poverty, provides community mediation services in areas of human relations and human

rights conflicts, and acts as an advocate on issues involving human rights. The District's acreage-voting system adversely affects the *Council's* efforts in support of human rights of residents within the District.

Maricopa Audubon Society, Inc. is a non-profit Arizona corporation with approximately 1400 members, many of whom reside within the District's geographic area. It is a chapter of the National Audubon Society. *Maricopa Audubon's* most central concern is the conservation of wetlands in Arizona's arid environment. *Maricopa Audubon* is concerned with the wise uses of water and energy because of their impact on wildlife. The District's policies greatly affect the Salt and Verde River watersheds, an area of 18,000 square miles. The highest concentrations of non-colonial breeding birds in continental North America are found in the riparian habitat of this watershed. Among the bird species is a unique and endangered population of desert-nesting Bald Eagles. The operational policies of the District can have substantial impacts, either beneficial or adverse, on this riparian habitat.

The *Metropolitan Phoenix Indian Coalition (Coalition)* is a coalition of community organizations providing education, counseling, social services, and health care to the Phoenix Indian community. Among the activities of the *Coalition* are voter registration and education including the encouragement of members of the Phoenix Indian community to take an educated voting interest in public issues and elections. The *Coalition* regards the District as a public institution whose rate-making activities, watershed management, dam operations and development, and environmental policies have a pervasive effect on the members of the Indian community of the Phoenix metropolitan area.

The *Orme Alternatives Coalition (Coalition)*is a loosely-knit coalition of religious, environmental, taxpayer, and civil rights groups and individuals united in their opposition to Orme Dam and dedicated to the development and implementation of alternatives which will solve the Phoenix

area's flood control problems. Member organizations include the Fort McDowell-Yavapai Tribe, the Inter-Tribal Council of Arizona, the National Congress of American Indians, the National Tribal Chairman's Association, the Friends' Meeting of Phoenix, the Lutheran Social Ministry of Arizona, the Presbytery of the Grand Canyon, the Arizona Ecumenical Council, and the Committee to Save the Fort McDowell Indian Community. Orme Dam is a $600 million proposed feature of the Central Arizona Project (C.A.P.). The C.A.P. is a multi-billion dollar project designed to bring Colorado River Water to central Arizona. The District's agent, the Salt River Valley Water Users' Association has entered discussions to become operator of the C.A.P. and as such would assume operation of Orme Dam. Orme Dam would be located at the confluence of the Salt and Verde Rivers upstream from Phoenix and would flood most of the Fort McDowell Indian Reservation resulting in the forced relocation of the Yavapai Indians from their ancestral homeland. One of the alternatives to Orme Dam presently being studied by the United States Water and Power Resources Service and the Army Corps of Engineers is the "reoperation" of District dams. Under this concept, new operating procedures would be employed at the six District dams on the Salt and Verde Rivers to reduce flood flows. At present the District retains maximum amounts of water for agricultural irrigation rather than to utilize the dams in a multipurpose manner including the provision of flood control for the Phoenix metropolitan area. J.A. 42-43. The *Coalition* opposes the District's one acre, one vote system because the interests of large landowners conflict with the needs of the rest of the Phoenix area residents.

People United for Self Help, Inc. (P.U.S.H.), an Arizona non-profit corporation, is an organization of and for disabled persons and their families in Maricopa County, Arizona. Among educational programs *P.U.S.H.* conducts

for its member families is a program in energy conservation. The rates, terms, and quality of electric service provided by the District have a great effect on the lives of *P.U.S.H.*'s disabled members and clients.

The *Valley of the Sun Grey Panthers (Grey Panthers)* advocate the interests of the elderly of the Phoenix metropolitan area on a variety of public issues, and among those issues are the rates and terms of utility service. Many of the members and constituents of the Grey Panthers are retired and live on fixed income, and they sharply feel the effects of increases in electric rates. Like other organizations who join in this brief, the *Grey Panthers* have actively participated in proceedings before the Commission and have felt the frustration of not having any meaningful procedure with respect to electric rate decisions by the District.

ARGUMENT

I. THE DISTRICT EXERCISES SIGNIFICANT AUTHORITY ON MATTERS OF IMPORTANCE TO ITS RESIDENTS WITHOUT ANY PUBLIC CONTROL OR ACCOUNTABILITY.

The Court of Appeals characterized the District[1] as a public entity whose operations vitally affect the economic interest and natural environment of the citizens within its boundaries. 613 F.2d at 185. Though Appellants challenge that characterization, the facts demonstrate its accuracy. The District is a political subdivision of the State of Arizona with the legal status of a municipality. ARIZ. CONST. art. 13, § 7. The District Board of Directors has broad and unrestricted power to direct District operations and affairs. ARIZ. REV. STAT. ANN. §§ 45-935-37 (Supp. 1980) Because members of the Board are chosen through an acreage-based electoral system which excludes nonproperty owners from participation and dilutes the voting strength of small landowners, the voting strength of large landowners is magni-

[1] It should be emphasized that the "reclamation" activities of the District exist separate and apart from its existence under Arizona law. J.A. 20.

fied. ARIZ. REV. STAT. ANN. §§ 45-909, 983 (Supp. 1980) The Board, however, makes public policy and exercises power in ways which substantially affect all District residents, property owners and nonproperty owners alike.

Appellants themselves accurately describe the substantial interest of all District residents in its policies and activities concerning water conservation:

> Because of the scarcity of water in Arizona, water conservation is central to a broad range of public policy issues facing Arizona's policy makers.

Brief of Appellants at 6.

> Indeed, of all Arizona resources, none is more scarce than water. There are few issues facing Arizona policy makers that are as important as how its water supplies are to be distributed among those interests that compete for them: residential development, mining, open space preservation, agriculture, industrial development, and others.

Id. at 45.

Appellants are correct that few issues facing Arizona policy makers are as important as water conservation and management. They fail to appreciate that the import of that issue extends to nonlandowners and small landowners as well as large landowners and that nonlandowners and small landowners have an important interest in participating in the election of public officials — District Board members — who plan and implement water policy.

A related issue is flood control. Whether and to what extent District facilities are utilized to provide flood control to the flood-ravaged Phoenix metropolitan area is of substantial interest to all its residents whether or not they own land. *See* J.A. 42-43.

What is said of the public interest in water conservation and management can be similarly said of the public interest in energy conservation and management. There are few more important issues of public policy. More than a quarter

of a million residents rely on the District for electric power, as the Court of Appeals observed. Further, the District owns five hydroelectric facilities and four steam generating plants; it is a partial owner of three coal-fired steam generating facilities; and it is a participant in the Palo Verde nuclear plant. 613 F.2d at 183. District policies concerning the burning of fossil fuels, the development of nuclear power, and the development of solar energy affect the cost-of-living, health, safety, and environment of all District residents, not just those who own real property.

Through Appellants invite comparison of the District with privately-owned utility companies, such comparison demonstrates that private utilities which operate in Arizona are more accountable to their customers and to the public for their rates and terms of service than the District, a public entity. The Arizona Corporation Commission, a popularly elected body, prescribes "just and reasonable rates" for private utility service and has authority to regulate all aspects of such service. ARIZ. CONST. art. 15; ARIZ. REV. STAT. ANN. § 40-321 (1956).

The District, by contrast, is exempt from regulation by the Arizona Corporation Commission. ARIZ. CONST. art. 13, § 7; art. 15 § 2. The District does not belong to private owners; it belongs to the public. Yet it is not accountable to the public for its rates and terms of service through the regulatory process; nor is it accountable through the electoral process. It is a public entity wielding public power, yet a large part of the public which bears its costs is foreclosed from participation in the election of the public officers who make its policies and direct its operations.

II. THE DISTRICT'S ONE ACRE, ONE VOTE SYSTEM IS UNCONSTITUTIONAL.

The nature and scope of District operations are such that it is preposterous for Appellants to deny their substantial impact on all District residents. Though District landowners may once have borne the cost of District operations, power users now bear virtually all of the costs without re-

gard to ownership of land. J.A. 36. Though the District may have commenced electric development and service as merely an incidental feature of water storage and delivery, its power operations have now taken on independent significance. This Court has previously upheld the constitutionally protected voting interest of utility customers in elections which affect the rates, terms, and quality of utility service, *Cipriano v. City of Houma*, 395 U.S. 701 (1969), and that interest is at issue in this case.

Appellants themselves acknowledge the vital importance to all District residents of the District's water conservation and management policies, and the same can be said of the District's policies concerning the conservation, development, and generation of electric power. The interest in the District's water and energy policies is not limited to landowners. Its policies are public policies; its acts are public acts; and those members of the public who own no land should not be foreclosed from participating in the public elections by which its policy makers and executors are chosen.

Appellants argue that the landowners who started the District put their land at risk and subscribed to the formation of the District only because the Arizona statutes under which the District was created gave them voting control proportionate to their landholdings. Those landholders have been well compensated for their risks, as Appellants themselves acknowledge, through the enhancement of the value of their lands. Brief of Appellants at 7.

While the District lands have increased in value, however, the nature of the District has changed. Though it once served a largely rural, agricultural area, and though its utility operations were once minimal, it now serves a rapidly growing metropolis, and its utility operations are vast in extent and in effect.

The District Board actively makes policy concerning water and power conservation and management, two of the most important public issues to all who live within its boundaries. It is a public body, and its scope of operations is now such that it can no longer remain the electoral captive of the large landowners who have controlled it from the start.

It is virtually self-evident that it is inconsistent with American principles of democracy that landowners should exclusively control the election of a body of public officers whose policies so vitally affect the public interest as the Salt River District Board. It is similarly self-evident that the electoral system should not be skewed so that, among those landowners, the largest have the greatest vote.

This Court stated in *Reynolds v. Sims, supra:*

> The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.
>
> [Public officials] represent people, not trees or acres. [They] are elected by voters, not farms or cities or economic interests.

377 U.S. at 558, 562.

Appellants, in their effort to retain a preferred class of voters, lose sight of the fact that the District is not owned by its landed residents. It is not a private preserve but a public body. Its owners are "we the people"-landowners and nonlandowners alike. And all those people who dwell within its boundaries who meet the basic qualifications of age, residence, and citizenship have a right under the Fourteenth Amendment of the United States Constitution to participate in the election by which the Directors of *their* District are chosen.

CONCLUSION

The organizations which join in this brief represent a cross section of the community with diverse interests in environmental safety, public health, water and energy conservation, watershed management and flood control, wildlife and natural resource preservation, human rights, voter education, and the rates, terms, and quality of electric and water service. They share in the belief that all residents of the Salt River District have an equal right under the Constitution to participate in the election of the District Board which makes public policy in those areas and they join in urging this Court to affirm the Court of Appeals decision declaring the present one acre, one vote system unconstitutional.

Respectfully submitted,

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